

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

STEVEN WAYNE KEEFE,

Plaintiff,

vs.

LEROY KIRKEGARD

Defendants.

CV 17-15-GF-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Petitioner Steven Wayne Keefe filed a petition seeking a writ of habeas corpus under 28 U.S.C. §2254 on January 1, 2017 (Doc. 1.) Keefe's petition challenges the constitutionality of the life sentence without parole imposed upon him in 1986 when he was a juvenile offender. Specifically, Keefe alleges he was not afforded individualized sentencing, taking into account the distinct attributes of his youth. Keefe requested the Court issue an order requiring the State of Montana to either resentence or release him. *Id.* at 37.

On March 9, 2017, Keefe filed an Unopposed Motion to Stay (Doc. 4), requesting the Court hold his habeas petition in abeyance while he attempted to exhaust his state court remedies. Keefe's request for a stay was granted. (Doc. 6.) Since the imposition of the stay, the state district court granted Keefe's petition for post conviction relief and vacated his underlying sentence. A new sentencing hearing was set for October 10, 2018 (Doc. 13 at 2.)

Judge Johnston issued Findings and Recommendations in this matter on August 22, 2018. (Doc. 14.) Because Keefe was granted the relief he requested pursuant to the 1986 judgment of conviction, and he was resentenced, Judge Johnston determined that the pending petition should be dismissed as moot. Judge Johnston reasoned that Keefe will not be precluded from potentially filing a federal habeas petition challenging the new judgment. *Id.* at 2.

Judge Johnston further recommended that a certificate of appealability should be denied because, by virtue of the grant of state postconviction relief and October sentencing hearing, there is no doubt Keefe has received the relief previously requested. Accordingly, his pending habeas petition is moot. There is no basis to encourage further proceedings at this time.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656

F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 14), are **ADOPTED IN FULL**.

DATED this 5th day of November, 2018.



Brian Morris
United States District Court Judge